



Suppressing Palestinian Rights Advocacy through the IHRA Working Definition of Antisemitism

Violating the rights to freedom of expression and assembly
in the European Union and the UK

European Legal Support Center (ELSC) - JUNE 2023

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I. Executive Summary

The endorsement, adoption and implementation of the International Holocaust Remembrance Alliance’s “*Working Definition of Antisemitism*” (IHRA WDA) in the European Union (EU), its Member States and the United Kingdom (UK) has **led to widespread restrictions of the right of assembly and freedom of expression.**

The “*contemporary examples of antisemitism*” attached to the IHRA WDA effectively redefine antisemitism by **wrongly conflating criticism of Israel with antisemitism.** While being branded as “*non-legally binding*”, the definition is being interpreted and used by governments and public and private actors **as if it was law.** The definition’s implementation has **severe chilling effects on free speech** and curtails human rights advocacy, specifically around Palestinian rights and political speech about Israel.

In the overwhelming majority of cases, **allegations of antisemitism invoking the IHRA WDA are false.** This report explains how the IHRA WDA has been adopted and implemented in a manner facilitating and validating the suppression of **human rights advocacy for Palestinian rights and silencing criticism of Israeli government policies and practices.**

After providing background in Section II, Section III shows that some European governments have used the IHRA WDA and its examples as a **basis for domestic decisions and policies,** which public and private actors are leveraging as **legally binding.** Section IV presents examples of incidents in which human rights and Palestinian rights advocacy have been suppressed on the basis of the IHRA WDA.

The European Legal Support Center (ELSC) has documented these incidents, which occurred between 2017 and 2022.

Key findings

1

The HRA Working Definition of Antisemitism (WDA) is increasingly implemented by public and private bodies as if it was law, although it is being branded as “*non-legally binding*”.

2

The IHRA WDA is being implemented in ways that curtail freedom of expression and assembly, lead to self-censorship and foster anti-Palestinian racism.

3

Advocates of Palestinian rights who are targeted suffer a range of unjust and harmful consequences, including loss of employment and reputational damage.

4

The IHRA WDA is being used - often by pro-Israel advocates - to intimidate and silence those advocating for Palestinian rights.

5

Allegations of antisemitism that invoke the IHRA WDA, in the documented cases, are overwhelmingly targeted at Palestinians, Jewish people and organisations that advocate for Palestinian rights, suggesting that the IHRA WDA is being implemented in a discriminatory manner.

6

Most challenges to the implementation of the IHRA WDA prove that the allegations of antisemitism were unsubstantiated.

7

The European Commission has consistently ignored and dismissed the growing human rights concerns about the IHRA WDA and failed to take measures to prevent any adverse impact of it on fundamental rights.

In light of the evidence presented in this report, **the European Legal Support Center (ELSC) urges the European Commission, as well as the governments, parliaments and public institutions of EU Member States, and the UK to:**

Cease and revoke the adoption, endorsement, promotion and implementation of the IHRA WDA.

Respect and uphold the right to freedom of expression of individuals and associations supporting the Palestinian people, as States and public authorities are required to do under Article 10 of the European Convention on Human Rights.

Respect and uphold the right to freedom from discrimination on the grounds of political or other opinions, as States and public authorities are required to do under Article 14 of the European Convention on Human Rights, as well as from EU institutions under Article 21 of the EU Charter of Fundamental Rights.

Develop, promote and implement strategies and mechanisms to fight antisemitism that do not undermine the fundamental freedoms and rights of advocates for Palestinian rights. In this context, consult scholars of antisemitism and related fields, experts on anti-racism and human rights defenders excluded and side-lined so far by the European Commission.

■

II. Introduction



Suppressing the Fundamental Rights to Freedom of Expression and Freedom of Assembly

Fundamental freedoms are the cornerstone of European democracies. The European Union (EU) has long been a leading defender of human rights worldwide. It actively protects civil society, free media and other pillars of democracy. Dismantling this commitment and heritage, the EU is failing to promote and protect the fundamental rights of advocates for Palestinian rights, whether in Palestine-Israel or in Europe. This in the name of the fight against antisemitism, which has been exploited by actors shielding the Israeli government.

The persecution of human rights defenders has been Israeli government policy in order to maintain its system of oppression over the Palestinian people. In this context, the IHRA WDA has evolved into a preferred tool and tactic by Israel and many of its supporters to target Palestinian rights advocacy and activism in Europe and elsewhere. A driving force behind the weaponization of the IHRA WDA has been the Israeli Ministry of Strategic Affairs and Public Diplomacy. Suspended in 2021, its mission and mandate to counter Israel's "delegitimation" was resumed at the beginning of 2023 under the Ministry of Diaspora Affairs and Combating Antisemitism.¹

The IHRA WDA is one among several methods used to silence criticism of Israel and to delegitimise and undermine human

rights advocacy. As part of its efforts to suppress such advocacy, the Israeli government has targeted the Palestinian-led international Boycott Divestment and Sanctions (BDS) movement. This movement for the freedom, justice and equality for the Palestinian people, inspired by the South African anti-apartheid movement, seeks to end Israel's system of apartheid, settler colonialism and occupation by means of nonviolent campaigns. Since 2015, the Israeli government and groups aligned with it have sought to ban, criminalise and suppress the BDS movement globally. This has led to implementation of anti-BDS policies and legislation in many countries.² The IHRA WDA and such anti-BDS measures reinforce each other in silencing legitimate speech and curtailing public assembly. The findings in this report show that the ways in which the IHRA WDA and anti-BDS measures are being implemented are discriminatory, harming specifically Palestinian and Jewish advocates of Palestinian rights.

The IHRA WDA's Redefinition of Antisemitism

Understanding the background of how the IHRA WDA was developed and came to be widely adopted, is necessary for understanding its purpose, effects and dangers. This background shows that the Israeli government intended the IHRA WDA to be used as a political tool to suppress speech and curtail human rights advocacy.³ Evidence from 2017-2022 confirms that this is how it has been used.

In 2004–2005, the European Monitoring Centre on Racism and Xenophobia (EUMC) commissioned and published a “*Working Definition of Antisemitism*”. This definition featured “*contemporary examples of antisemitism*”, including examples relating to the State of Israel. After it had been criticised due to its conflation of such criticism of Israel and antisemitism, the definition was abandoned by the EUMC’s successor body, the Fundamental Rights Agency (FRA), which removed it from its website in 2013. According to research by civil society organisations, “*FRA explained that the IHRA WDA had never been viewed as a valid definition of antisemitism; that the Agency was not aware of any official EU definition of antisemitism; and that the document was removed in a clear-out of non-official documents.*”

The EUMC definition was the result of a concerted effort—underway since the early 2000s—by a range of individuals and organisations aligned with the Israeli government, to re-define antisemitism in a way that deflects and silences criticism of the Israeli government for its human rights violations and violent repression against Palestinians. This reconceptualization of antisemitism focusing on criticism of Israel has come to be known as the ‘New Antisemitism’. The process by which it was formulated, introduced and institutionalised, has been documented by Antony Lerman, a former head of the World Jewish Congress’s Institute of Jewish Affairs.⁴ As Lerman shows, the Israeli government has embraced and promoted the thesis of the ‘New Antisemitism’, actively joining efforts to delegitimise stances critical of Israel by framing them as manifestations of antisemitism.⁵

Efforts to capture and codify the ‘New Antisemitism’ in a new definition, were initially championed by Professor Emeritus of Jewish History, Dina Porat, in her capacity as the head of the Project on Antisemitism at Tel Aviv University. Significantly, this project was funded by the Mossad,⁶ Israel’s national intelligence agency. It also had funding from members of pro-Israel advocacy groups, such as the Community Security Trust (CST) in the UK, the American Jewish Committee (AJC), the Anti-Defamation League (ADL) in the United States, the European Jewish Congress (EJC) and B’nai B’rith International.⁷

After the new antisemitism definition was abandoned by the EUMC, its advocates—including, individuals affiliated with the AJC, the Simon Wiesenthal Center (SWC), the EJC, NGO Monitor and UN Watch—lobbied other European bodies to adopt the definition.⁸ They had no success. Consequently, they approached the International Holocaust Remembrance Alliance (IHRA),⁹ which adopted these two sentences from the EUMC definition on 26 May 2016:

“A certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

Eleven “*contemporary examples of antisemitism*” were attached to the definition, seven of which relate to Israel. On its website, the IHRA contextualises these examples as being intended “*to guide*

[sic] IHRA in its work.” It describes them as non-exhaustive and mentions that the “overall context” should be taken into account. The most ambiguous and problematic examples are those that misleadingly conflate criticism of Israel with anti-Jewish prejudice:

Example 7: Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.

Example 8: Applying double standards by requiring of [Israel] a behaviour not expected or demanded of any other democratic nation.

Example 10: Drawing comparisons of contemporary Israeli policy to that of the Nazis.

Hundreds of leading scholars on antisemitism, Holocaust studies and related fields have argued that this definition and its examples are deeply flawed. Political opposition to Zionism or to the State of Israel, which does not host and represent all Jews, is not in itself an expression of animus against Jews. The definition lacks clarity, undermining its effectiveness as a tool for addressing antisemitic hatred and harassment. As many experts have argued, the IHRA WDA does not offer guidance to distinguish criticism of Israel from antisemitism.¹⁰ The resulting ambiguity has facilitated the misuse of the IHRA WDA as a political weapon that stifles freedom of expression and assembly.

As the case studies in this report show, the invocation of the IHRA WDA almost exclusively targets Palestinian rights advocacy, harming Palestinian and Jewish organisations and activists in particular.

While the IHRA did not formally adopt the eleven examples of antisemitism, many individuals and organisations, as well as the European Commission, have been interpreting and leveraging these examples as part of the IHRA WDA.¹¹ In February 2023, Vice-President of the European Commission (EC) Josep Borrell made clear in an answer to a parliamentary question that the EC considers the examples to be an integral part of the IHRA WDA, and suggested that Amnesty International’s report about Israeli apartheid violates the examples of the definition.¹²

The IHRA WDA as a New European Paradigm

As a result of its vigorous promotion by organisations shielding the Israeli government, the IHRA WDA has been adopted by many European institutions under the guise of fighting antisemitism. Despite significant criticisms of the IHRA WDA by scholars and other experts in the fields of antisemitism studies and law,¹³ in June 2017, the European Parliament adopted a resolution “*call[ing] on the Member States and the Union institutions and agencies to adopt and apply [the IHRA WDA] in order to support judicial and law enforcement authorities in their efforts to identify and prosecute anti-Semitic attacks more efficiently and effectively,*

and encourages Member States to follow the example of the UK and Austria in this regard.” In December 2018, the Council of the EU followed with a de-claration calling on “the Member States that have not done so yet” to endorse the IHRA WDA “as a useful guidance tool in education and training, including for law enforcement authorities in their efforts to identify and investigate antisemitic attacks more efficiently and effectively.”¹⁴ In 2020, the Council of the EU issued a declaration on “mainstreaming the fight against antisemitism across all policy areas” that acknowledged the importance of the IHRA WDA as “a guiding tool for better identifying and addressing this scourge”. None of these declarations acknowledged the growing criticisms and concerns about the IHRA WDA as being unfit for the purpose of fighting antisemitism and its susceptibility to politically motivated misuse.¹⁵

The European Coordinator on combating antisemitism and fostering Jewish life, Katharina von Schnurbein, appointed in 2015 by the European Commission, has actively promoted the use of the IHRA WDA and repeatedly stated that antisemitism is hiding “disguised as anti-Zionism”.¹⁶ In 2018, Commission Vice-President Vera Jourová echoed her, saying that “fighting the scourge of Antisemitism, also when it hides behind antizionism, here in Europe and worldwide is a joint endeavour of the European Union and the State of Israel.” The Commission has pushed the Member States to appoint their own coordinators against antisemitism. Among others, the coordinators ap-

pointed in Germany and The Netherlands have promoted the IHRA WDA and narratives mistakenly equating anti-Zionism with antisemitism.

As mentioned above, the EU has actively promoted the adoption and implementation of the IHRA WDA by its Member States. In so doing, the EU has demonstrated its unwillingness to address concerns¹⁷ about the ambiguity of the definition and its problematic conflation of criticism of Israel with antisemitism.¹⁸ When asked if the Commission had conducted a risk assessment of the implications of the IHRA WDA on fundamental rights, von Schnurbein affirmed in a tweet on 23 November 2022 “yes, we assessed”. However, responding on 9 December 2022 to a Freedom of Information request, the European Commission acknowledged it “has not conducted ‘any fundamental rights assessment or scrutiny (...) into the human rights implications of its endorsement and/or promotion of the IHRA Working Definition of Antisemitism.’”¹⁹

The European Commission has also failed to address and reflect the diversity of positions regarding definitions of antisemitism. In particular, the EC has ignored that the IHRA WDA is highly controversial and contested. Testifying to the controversial status of the IHRA WDA, more than 350 scholars have endorsed an alternative definition titled the Jerusalem Declaration on Antisemitism, which they published in March 2021. Also responding to the flaws of the IHRA WDA is the Nexus Document, developed by

scholars affiliated with The Bard Center for the Study of Hate. Furthermore, in an effort to address “*the discredited IHRA definition*”, a coalition of 15 Jewish groups published a statement titled 5 Principles for Dismantling Antisemitism, which also denounces “*the current fractured discourse on antisemitism and offers a path to move beyond it.*” In November 2022, after the EU ambassador to the UN spoke in favour of the IHRA WDA during a debate at the UN General Assembly, 128 scholars specialising in antisemitism, Holocaust Studies and related fields warned, in an open letter: “*Don’t trap the United Nations in a vague and weaponized definition of antisemitism.*”²⁰ In April 2023, more than 100 Israeli, Palestinian and international civil society groups, including Human Rights Watch and Amnesty International, urged the UN not to adopt the IHRA WDA, arguing it “*has often been used to wrongly label criticism of Israel as antisemitic, and thus chill and sometimes suppress, non-violent protest, activism and speech critical of Israel and/or Zionism.*”²¹

Instead of heeding such authoritative opinions, the European Commission has actively encouraged the implementation of the IHRA WDA with its “*Handbook for the practical use of the IHRA working definition of antisemitism*” published in January 2021, as well as through the “*EU Strategy on combating antisemitism and fostering Jewish life (2021 – 2030)*” released in October 2021. When civil society attempted to hold the Commission accountable for misinformation in its Handbook,²² the Commission did not respond to any

substantive concerns. Instead, it merely reiterated the claim that “[t]he IHRA definition is not legally binding and does not replace existing legislation on hate crime or on anti-discrimination”, adding the incorrect assertion that the IHRA WDA does not “*limit freedom of expression or the possibility to criticise Israel.*”²³

In its public statements and policy documents addressing antisemitism and the IHRA WDA, the Commission has consistently ignored evidence and expert analysis confirming that the IHRA WDA is an ineffective and politicised tool in the fight against antisemitism. In particular, the Commission has failed to address that the IHRA WDA poses a danger to fundamental rights to the freedom of expression and assembly. Justifying the Commission’s stance by asserting that the IHRA WDA is not legally binding sidesteps the fact that the IHRA WDA is systematically being implemented in ways that limit freedom of expression and intimidate human rights advocates.

This report addresses the UK,²⁴ Austria and Germany as examples of countries where IHRA WDA based policies have been adopted and enforced, targeting human rights advocates (section III). As shown in examples of incidents documented by ELSC and which occurred between 2017 and 2022 (section IV), human rights and Palestinian rights advocacy have been suppressed as a result of the implementation of the IHRA WDA

***III. The IHRA WDA
as a Source of
de facto Binding
Policies in the EU
& UK***

Despite advertising the IHRA WDA as “non-legally binding”, the majority of EU Member States have endorsed the IHRA WDA as the authoritative instrument for addressing antisemitism, giving it soft law power. EU statements and policies through which the IHRA WDA is being applied, show that it has gained law like force and impact.

The hard-core advocates of the IHRA WDA always intended it to have binding legal status and force.²⁵ The “non-legally binding” provision was only added to secure its adoption by the IHRA Plenary in May 2016.²⁶ There have been efforts in some Member States to introduce the IHRA WDA as a basis for legislation. On 20 June 2018, Romania’s Chamber of Deputies adopted a law combating antisemitism that, according to the IHRA and according to the European Commission, “is based on” the IHRA WDA.²⁷ The Commission’s Handbook presents the Romanian legislation as a “good practice”, arguing: “Some countries, such as Romania, went further by introducing legislation that [...] prosecutes antisemitic crimes based on the IHRA Working Definition of Antisemitism”.²⁸ In Greece, the Deputy Prime Minister was assigned with “the coordination and supervision of the integration of the definition[s] into domestic legislation.” In May 2022, the Assembly of the Community of Madrid proposed a bill to the Spanish Congress, the stated purpose of which is fighting antisemitism and which referenced the IHRA WDA and its examples in its preamble. The bill, which passed a first vote in the Congress,

also aims to exclude entities promoting boycott activities from public funding and public tenders.

While the IHRA WDA is not formally anchored in EU Member States’ national legislation, it is treated as legally binding by public and private actors and has become a source of domestic decisions and policies for targeting advocates for Palestinian rights. As such, the IHRA WDA has become the basis for policies that are legally binding de facto. The below examples from the UK, Austria and Germany illustrate how the IHRA WDA has gained, in practice, the force of law.

1. United Kingdom

The UK Conservative Government was the first European government to formally adopt the IHRA WDA on 12 December 2016. Governmental adoption was preceded by the release of the report of the all-party parliamentary Select Committee on Home Affairs (SCHA) on antisemitism in the UK. In this report, the SCHA “broadly accept[ed]” the IHRA WDA but proposed that caveats be included “to ensure that freedom of speech is maintained in the context of discourse about Israel and Palestine, without allowing antisemitism to permeate any debate”. The report recommended that the following two reservations should be attached to the adoption:

« It is not antisemitic to criticise the Government of Israel, without additional evidence to suggest antisemitic intent. »

« It is not antisemitic to hold the Government of Israel to the same standards as other liberal democracies, or to take a particular interest in the government’s policies or actions, without additional evidence to suggest antisemitic intent. » ²⁹

The government rejected the SCHA recommendation, arguing that an existing caveat in the IHRA definition that “criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic” was “sufficient to ensure freedom of speech.”

Since its formal endorsement of the IHRA WDA in 2016, the UK Government has pursued policies that restrict lawful expressions of solidarity with the Palestinian people, and that make adoption and implementation of the IHRA WDA de facto binding for many British public and private institutions, particularly governments and universities.

LOCAL LEVEL

In September 2019, Communities Secretary Robert Jenrick wrote to all councils with the instruction that they adopt the IHRA WDA “at the earliest opportunity” and use it in “all appropriate occasions, including in disciplinary proceedings”.³⁰ In this letter, he insisted that local councils “should not be wasting time and taxpayer’s money pursuing their own foreign policies”.³¹ This was clearly in reference to any attempts to introduce policies or motions related to boycott or divestment from Israeli institutions or other entities complicit with Israel’s human rights violations. Jenrick also threatened that local

councils refusing to adopt the IHRA WDA would be publicly listed and should not expect to receive public funds.³²

The political context of these threats is one in which the Conservative Government has focused on limiting human rights advocacy on behalf of Palestinians more generally. Jenrick’s announcement came after consecutive governmental moves to curtail BDS campaigns in support of Palestinian human rights. In October 2015, several government ministers announced their intention to introduce new rules to “stop ‘divisive’ town hall boycotts and sanctions”. These rules were aimed at suppressing support for BDS, ethical divestment and non-procurement from companies involved in the Israeli government’s human rights abuses. In 2016, the UK Government also issued binding ministerial guidance to the Local Government Pensions Scheme, which included a provision that administrators of local government pension funds must “not pursue policies contrary to UK foreign or defence policy” – again in clear reference to BDS campaigns supporting Palestinian human rights.³³ In another example, in the Queen’s Speech in December 2019, the UK Government committed to “banning public bodies from imposing their own direct or indirect boycotts, divestment or sanctions campaigns against foreign countries”, by means of legislation. It reiterated its commitment in the Queen’s Speech of May 2022, which stated: “Legislation will prevent public bodies engaging in boycotts that undermine community cohesion”, and detailing the Government’s BDS Bill. The bill has

not yet been presented to Parliament. However, since background papers claim that BDS has “*legitimised antisemitism*”, it is reasonable to assume that the planned law will be based, on the IHRA WDA, or at least on its narrative.³⁴

Promulgation of anti-BDS legislation and the IHRA WDA by the UK Government should be understood as a correlate to its broader policies eliding rights advocacy in general, and Palestinian rights advocacy in particular.³⁵

UNIVERSITIES

The Government has also threatened institutions of higher education with discontinued funding if they fail to adopt the IHRA WDA. In February 2017, the Minister for Universities Jo Johnson wrote in a letter to the Chief Executive of Universities in the UK (UUK) that he expects the IHRA WDA to be “*understood and acted upon at all times*”. He specified that “*this will include events such as those that might take place under the banner of ‘Israel Apartheid’*”.³⁶ In October 2020, the Secretary of State for Education Gavin Williamson warned university vice-chancellors that the Office of Students, the higher education regulator for England, could be asked to take regulatory action including “*suspending funding streams*”, if universities failed to adopt the IHRA WDA by December 2020.

Amidst increasing governmental pressure, more than 130 local councils, and more than 200 institutions of higher education, including 95 universities, the Office for Students and the National Union of Students (NUS) have adopted the IHRA WDA and, in many documented cases, they

have implemented it. Consequently, the definition now forms part of internal investigations and disciplinary proceedings of antisemitism. This has overwhelmingly impacted people who have criticised the Israeli government or advocated for BDS, and who have been subjected to disciplinary proceedings for alleged antisemitism. Examples discussed in Section IV of this paper illustrate the systematic nature by which the IHRA WDA has been used to make false allegations of antisemitism and has been implemented in order to stifle advocacy for Palestinian rights.

2. Austria

Austria followed the UK as the second European State to adopt the IHRA WDA. The conservative (ÖVP-Österreichischen Volkspartei) and socialist (SPÖ-Sozialdemokratische Partei Österreichs) coalition government endorsed the definition by decision of the Council of Ministers on 21 April 2017. Subsequently, municipal councils of Austrian cities and the Federal Parliament applied the IHRA WDA, in particular its Israel-related examples, in “*anti-BDS resolutions*”. These resolutions condemned the BDS movement as “*antisemitic*”. They aim to restrict local support for BDS based on the false claim that the movement would target the Government of Israel, businesses and individuals because of their Jewish identity.³⁷

LOCAL LEVEL

On 27 June 2018, the Municipal Council of Vienna unanimously adopted a resolution against BDS campaigns, which declares:

« The City of Vienna condemns in strongest terms the globally existing antisemitism, opposes the antisemitic BDS campaign, provides no city-owned rooms for BDS campaigns and events, exhibitions or demonstrations that pursue the aims of BDS, [and] does not support events that promote BDS. »

The resolution does not mention the IHRA WDA explicitly. However, the minutes of the Council session show that the Councillors applied the ‘New Antisemitism’ narrative endorsed by the IHRA WDA drafters and promoters, to the BDS movement. They justified the resolution with the false claim that BDS “has the stated goal of harming and destroying the State of Israel.”³⁸

Similarly, on 14 November 2019, the Municipal Council of the City of Graz passed a resolution entitled “Declaration against Antisemitism and BDS.” Adopted with the support of all political parties, except the local communist party, the resolution states that:

“1) The City of Graz [...] condemns all forms of antisemitism and anti-Zionism; 2) City-owned rooms and facilities must not be made available to organisations that make antisemitic statements or question Israel’s right to exist; 3) Municipal offices must not support events of groups that pursue or promote the goals of the BDS movement; 4) Municipal offices are instructed to ensure that businesses affiliated with the municipality adhere to this policy; and, 5) The Municipal Council supports the City Government in the prevention and determined combat of antisemitism, anti-Zionism and all forms of racism.”

On 29 January 2020, the Municipal Council of the City of Innsbruck adopted a “Declaration against Antisemitism, Anti-Judaism and Anti-Zionism”, with commitments and measures targeting supporters of anti-Zionism and BDS similar to those found in the resolution of Graz.

FEDERAL/GOVERNMENT LEVEL

On 27 February 2020, Austria’s Federal Parliament (National Council) passed—by unanimous vote—the resolution “Condemnation of Antisemitism and the BDS Movement”, in which it strongly condemned all forms of antisemitism, including “*Israel-related antisemitism*”, and called on the Federal Government to oppose these tendencies. In this resolution, Parliament further called on the Federal Government to: “*condemn the BDS movement and its aims*”, “*provide no rooms or infrastructure to organisations and societies that make antisemitic statements or question Israel’s right to exist*”, and “*give no support, financially or otherwise, to events of the BDS movement or groups that pursue its goals*”.

In their motion, Austrian legislators justified the need for this resolution, in part, with reference to the call by the European Parliament on EU Member States to adopt the IHRA WDA and train their law enforcement and judicial organs to prosecute antisemitism. Legislators claimed that the BDS movement would be a contemporary manifestation of antisemitism as defined by the IHRA WDA, because “*the group demonizes Israel and applies double standards against it, [and] holds Austrian Jews responsible for Israel’s politics*”. Flouting the fact that the

United Nations has for decades endorsed the Palestinians' right of return, as upheld by the Universal Declaration of Human Rights and international law, Austrian legislators also denounced the BDS movement with a claim that it "*questions the Jewish state's right to exist by calling for the right of return of Palestinian refugees and all their descendants.*"

These anti-BDS resolutions expressed the opinion of Austrian parliaments at the municipal and federal levels. They are not laws. However, as resolutions supported by the overwhelming majority of Austria's political parties, they are **widely interpreted as authoritative and binding**.

By 2021, Austria's Federal Government composed of the ÖVP and Green Party had incorporated the IHRA WDA into its National Strategy against Antisemitism as the authoritative definition of antisemitism, including its controversial examples of "*Israel-related antisemitism*".³⁹ Among other goals, the Government's measures for preventing and combatting antisemitism were aimed at preventing legitimate and lawful expressions of criticism of the Government of Israel, such as BDS and anti-Zionism.

3. Germany

In September 2017, the German Federal Government, then a coalition of the conservative CDU-CSU and the social democratic SPD, endorsed the IHRA WDA by decision of the cabinet. In that year, municipal councils of German cities, with the support of all major political parties, had already begun to use the

IHRA WDA to pass anti-BDS resolutions similar to those in Austria. Between 2018 and 2019, German state (Länder) parliaments and the Federal Parliament (Bundestag) followed suit with their own anti-BDS resolutions, sometimes explicitly referring to the IHRA WDA, sometimes borrowing language or concepts from the IHRA WDA and its proponents.

LOCAL LEVEL

The Municipal Councils of Frankfurt and Munich were the first to pass anti-BDS resolutions in 2017. Their respective resolutions, entitled "*No space for anti-semitism – actively opposing BDS*" and "*Against all forms of antisemitism – no cooperation with the anti-Semitic BDS movement*", requested the cities' administrations and affiliated enterprises to withhold facilities and subsidies from individuals, associations and societies supporting BDS. The resolutions also requested that the mayor and city government ensure respect of this policy. Similar resolutions were adopted in 2018 by the parliaments of Hamburg and Berlin, and by the cities of Cologne, Dortmund, Bochum, Bonn, Leipzig, and Bielefeld in 2019. The resolutions adopted in Munich, Berlin, Leipzig and the annex attached to Dortmund's resolution contained explicit reference to the IHRA WDA, and all the resolutions relied on or borrowed language from the IHRA WDA to frame the BDS movement as antisemitic.⁴⁰

REGIONAL (LÄNDER) LEVEL

The parliament of Baden-Württemberg was the first German state parliament to adopt a resolution condemning the BDS

movement on 7 March 2018. Entitled “Resolutely fighting antisemitism”, the resolution tasked the judiciary with, inter alia, investigating whether boycotts of Israeli businesses and goods constitute a criminal offence subject to prosecution and sanctions. On 22 June 2018, the parliament of Thuringia followed with the resolution “Consistently combatting antisemitism in Thuringia”. In this resolution, the parliament condemned the BDS campaigns as a “*manifestation of Israel-related antisemitism*” and committed to ensuring that no support, financial or otherwise, would be granted to supporters of BDS by the state of Thuringia. On 20 September 2018, the parliament of North Rhine-Westphalia (NRW), Germany’s most populous state, adopted—with the support of all political parties—the resolution “No place for the antisemitic BDS movement in North Rhine-Westphalia”. The resolution stipulated that NRW institutions must not provide rooms to or support events of the BDS movement and groups that support its aims and called on all public actors to comply with this position.⁴¹

In January 2023, NRW also decided to introduce new conditionalities for public funding, based on the IHRA WDA. The NRW Coordinator against antisemitism published a call for funding projects with the purpose of fighting antisemitism. To be eligible for funding, the candidates must provide a statement “*recognising the IHRA WDA*”. Eligible applicants

must “*not support any organisations that question Israel’s right to exist or any projects that call for a boycott of Israel, or actively support the BDS movement (cf. resolution of the State Parliament of Nordrhein-Westfalen of 20 September 2018).*” This type of funding conditionality, which was encouraged by the European Commission’s “*Handbook for the practical use*” of the IHRA WDA, further reduces the capacity of organisations advocating for Palestinian rights and intensifies the chilling effect on speech about Palestine-Israel. It excludes any grantees advocating for Palestinian rights or critical of Israeli policies, and it paves the way to defunding these organisations.

FEDERAL/GOVERNMENT LEVEL

On 17 May 2019, Germany’s Federal Parliament (Bundestag) adopted, with the support of almost all political parties, the resolution titled “Resolutely opposing the BDS movement – combatting antisemitism”. In this resolution, the Bundestag explicitly quoted and applied the IHRA WDA in its “*extended form*”, which the German government had endorsed in 2017. The sentence “*In addition, the State of Israel, understood in this context as a Jewish collective, can also be the target of such attacks*” reflects the Bundestag’s claim that the BDS movement is antisemitic. The resolution also welcomed the anti-BDS resolutions adopted previously by German cities, and decided to withhold rooms and facilities under federal administration from organisations and groups that support BDS. The Bundestag called on the Federal Government not to extend support to events by the BDS mo-

vement and groups supporting its aims, and to abstain from funding projects that promote the boycott of Israel or support the BDS movement.

As in the case of Austria, the German anti-BDS resolutions express the opinion of German parliaments at the municipal, regional and federal levels. These opinions are not legally binding. However, given that the large majority of Germany's political parties support these resolutions reiterating the IHRA WDA, they have been perceived as authoritative and are being applied as legally binding. Section IV of this paper describes numerous instances of such application.

More recently, in the spring of 2021, the Bundestag passed a law tabled by the Government on the fight against far-right extremism and hate crime. This law amended §46 of the German Criminal Code to include antisemitism among the motives and aims that are to be considered by courts when sentencing perpetrators.⁴² The Government's bill that led to the new law explicitly mentioned the IHRA WDA as a reference tool for determining what constitutes antisemitic conduct under §46. Although it did not incorporate the examples attached to the definition, it did reference them.⁴³

This reference to the IHRA WDA entails risks. Since preparatory works and deliberative materials are used by courts when interpreting the meaning and the purpose of a law, reference to the IHRA WDA can influence and mislead German courts. They may falsely interpret lawful and legitimate expressions of criticism of the Israeli government, such as BDS and anti-Zionism, as "*Israel-related antisemitism*" subject to prosecution and punishment.

UNIVERSITIES

The IHRA WDA has been adopted by German academic institutions. In 2019, the General Assembly of the German Rectors' Conference (HRK) adopted a resolution welcoming the IHRA WDA and stating that it should "*take root in all universities*". It expressed support for another resolution initiated by the Jewish Union of Students Germany and the Young Forum of the German-Israeli Society calling for the IHRA WDA to be "*adopted at all higher education institutions*" and denouncing the BDS movement as "*an especially aggressive expression of Israel-related antisemitism*".

***IV. Suppression of
Palestinian Rights
Advocacy through
the IHRA WDA***

Case studies

BETWEEN 2017 & 2022



The IHRA WDA has been implemented in the UK, Austria and Germany by public and private bodies in ways that have led to widespread infringements of the fundamental rights to freedom of expression and assembly. The IHRA WDA anchors policies leading to the infringement of the rights to freedom of expression and assembly in a number of ways:

- **public and private bodies make direct reference to the IHRA WDA;**
- **they rely on anti-BDS resolutions using the ‘New Antisemitism’ narrative contained in the IHRA WDA;**
- **or they base their arguments on the IHRA WDA.**

The incidents presented below are illustrative examples from a larger number of cases that occurred between 2017 and 2022 and were documented by the ELSC.⁴⁴

Among the 53 incidents documented in the 26 summaries outlined in this section, 42 incidents have involved the targeting of groups with members who are People of Colour or the targeting of individuals who are People of Colour, among whom 19 were Palestinians. In 11 incidents, groups identifying as Jewish or Jewish individuals were targeted, in particular those with antizionist views or sympathy towards the Palestinian struggle for human rights. All the individuals and groups who were targeted in these incidents expressed sympathy towards Palestinian human rights. **This data shows potential discrimination in the way the IHRA WDA is implemented, suggesting that Palestinians and their allies, whether Jewish or People of Colour or others, are primary targets of those using the IHRA WDA to delegitimise, smear or sanction them.**

Analysis of this large number of cases reveals a clear pattern in how the IHRA WDA is being implemented:

- 1** The IHRA WDA is increasingly implemented by public and private bodies as if it was law, although it is being branded as “*non-legally binding*”.
- 2** The IHRA WDA is being implemented in ways that curtail freedom of expression and assembly, lead to self-censorship and foster anti-Palestinian racism.
- 3** Advocates of Palestinian rights who are targeted suffer a range of unjust and harmful consequences, including loss of employment and reputational damage.
- 4** The IHRA WDA is being used – often by pro-Israel advocates – to intimidate and silence those advocating for Palestinian rights.
- 5** Allegations of antisemitism that invoke the IHRA WDA, in the documented cases, are overwhelmingly targeted at Palestinians, Jewish people and organisations that advocate for Palestinian rights, suggesting that the IHRA WDA is being implemented in a discriminatory manner.
- 6** Most challenges to the implementation of the IHRA WDA prove that the allegations of antisemitism were unsubstantiated.
- 7** The European Commission has consistently ignored and dismissed the growing human rights concerns about the IHRA WDA and failed to take measures to prevent any adverse impact of it on fundamental rights.

Even though most challenges to the implementation of the IHRA WDA were successful, the disciplinary procedures and litigation resulting from false allegations of antisemitism have produced a “*chilling effect*” on the freedom of expression and assembly.

Case studies

1. United Kingdom

a. Censorship of academic invited for a conference to launch his book on Palestine

/ In October 2021, Associate Professor at Roskilde University in Copenhagen, Dr Somdeep Sen, was invited by the University of Glasgow to deliver a lecture about his new book “*Decolonizing Palestine*”. Prior to the event and following a complaint by the university’s Jewish society alleging antisemitism, the university required Dr Sen to provide details of his talk before he delivered it and warned him against speech that may breach UK anti-terrorism law or the IHRA WDA. After exchanges between the professor and the University and the latter’s refusal to acknowledge the problematic vetting, Dr Sen rejected the university’s invitation. The event took place online and was hosted by other organisations.

b. Job offer rescinded by public body after false allegations of antisemitic social media posts

/ In August 2021, a public body rescinded a job offer to a student, arguing that some of their social media posts amounted to “*unlawful antisemitism*” according to the IHRA WDA. In one post identified by the employer, the student had pointed to a pattern they observed: individuals who expressed racial intolerance or hatred on social media were also likely to express support for Zionism and/or

the practices of the Israeli government. Another of the student’s posts cited by the employer shared the video of a Jewish descendant of Holocaust survivors speaking of their belief in a moral obligation of the Jewish people to denounce Israel’s crimes. The Holocaust survivors’ descendant also remarked in this video that history was repeating itself. The third post identified similarities between the Nazi regime’s propaganda strategy of portraying the targets of violence as a threat to domestic order and the strategies employed by modern states, including Israel, to justify repressive and discriminatory actions against minority communities. After rescinding the job offer, the public body refused the student’s requests for a discussion.

c. Student rights activist disciplined by university for public speech about police brutality

/ In February 2021, a student activist for Palestinian rights was subject to a disciplinary hearing by their university following a complaint submitted by a local student society.⁴⁵ Quoting from the IHRA WDA, the complaint alleged that the student had made antisemitic statements on their Facebook account, as well as during a speech given at a Black Lives Matter rally. The student had called for ending police brutality everywhere, with reference to the well-documented murder of a Palestinian autistic man

by an Israeli police officer. According to the student society, this speech was antisemitic because the student linked George Floyd's death to the military style techniques used and taught by the Israeli Defence Forces. The university investigated the complaint and conducted a disciplinary hearing.

d. Other disciplinary proceedings against academics and students for alleged antisemitic conduct / In 2020 and 2021, the ELSC assisted 16 academics and seven students who were subject to formal disciplinary proceedings by British universities in response to complaints about alleged antisemitic conduct. These complaints concerned, inter alia: liking and sharing social media posts; sharing a Human Right Watch infographic on Israel's apartheid on social media; signing a [letter](#) in support of Malia Bouattia, former president of the UK National Students' Union, who faced a smear campaign based on unfounded allegations of antisemitism and support of terrorism; social media posts commenting on accusations of antisemitism within the British Labour Party; social media posts about Israel's oppressive policies against Palestinians; posting a social media post commenting on a banner which stated "*End the Palestinian Holocaust*"; the extract of a peer-reviewed book published by a reputable academic press; an academic article about pro-Israel advocacy in the UK and how it is being used to counter pro-Palestinian sympathy. University representatives cited the IHRA WDA as a reference for determining whether conduct was antisemitic.

“ *I found the whole thing very stressful and ended up in the emergency room with what I suspect was a panic attack.* ”

A teacher who was investigated by their university for liking a tweet.

e. Student union member sanctioned for social media post / During Israel's bombing of the Gaza Strip in May 2021, a member of a student union was investigated for alleged antisemitic conduct for sharing the following post on social media: "*If you are silent when it comes to Palestine, you would have been silent at the time of the Holocaust*". The union's Executive Committee concluded that the student had violated the Code of Conduct, based on two examples of the IHRA WDA, without any comprehensive investigation into the matter. The student was sanctioned with a written warning: the Student Union Executive Committee sent a letter to the students, warning them not to write such posts and instructing them to have a dialogue with the complainants.

f. Charitable event excluded by Tower Hamlets / [The Big Ride for Palestine](#) is an annual charity bike ride to benefit the Middle East Children's Alliance. The Middle East Children's Alliance is a California-based non-profit organisation working for the rights and the well-being of children in the Middle East. In 2019, the organisers of the Big Ride asked the Palestine Solidarity Campaign (PSC) to arrange a rally in the London borough of Tower Hamlets to welcome the riders at the end of their journey. The PSC asked Tower Hamlets for permission to host

the event in a local park. When permission was denied, the PSC obtained correspondence among the councillors of Tower Hamlets through a Freedom of Information request. The correspondence revealed that the IHRA WDA was the main reason for the refusal of the permit. Emails exchanged between the councillors showed that they feared a “real risk” that the event and its organisers would breach the IHRA WDA, which Tower Hamlets had adopted on 21 November 2018. Councillors pointed to the Big Ride’s website, which refers to Israel’s apartheid and ethnic cleansing. Following the incident, concerned British scholars, lawyers and politicians published an open letter protesting the use of the IHRA WDA for restricting freedom of expression and assembly.

g. Student events for Israeli Apartheid Week disrupted or cancelled on campuses /

Several events organised by student groups during Israeli Apartheid Week (IAW) at university campuses were disrupted or cancelled between 2017 and 2018. Israeli Apartheid Week is an annual series of events organised globally to raise awareness about Israel’s apartheid regime and to build support for the BDS movement. It is often the opportunity for student movements to demonstrate intersectionality and connect with other struggles for justice in the UK and beyond. Such events have been disrupted in at least four universities by complaints or smear campaigns invoking the IHRA WDA. In February 2017, the University of Central Lancashire (UCLAN) cancelled an event entitled “*Debunking misconceptions on*

Palestine and the importance of BDS”, citing the event’s alleged incompatibility with the IHRA WDA.⁴⁶ According to Ben White, a journalist and author who was due to speak at the event, the student organisers (UCLAN Friends of Palestine Society) learned about the cancellation from the media. The day before the cancellation, Israel advocacy groups StandWithUs, North West Friends of Israel and Sussex Friends of Israel had campaigned online, calling on their supporters to challenge the event. The same month, the University College of London (UCL) cancelled the IAW event “Quad under occupation” organised by Students for Justice in Palestine. The University had received a complaint from Academic Friends of Israel, challenging that the event could go ahead after the IHRA WDA had been adopted by the Government.⁴⁷ Also in February 2017, the University of Exeter cancelled a ‘Mock Israeli checkpoint’ that the Friends of Palestine Society planned to install to raise awareness during IAW about the Israeli occupation. Pro-Israel watchdog Campaign Against Antisemitism (CAA) claimed that “*the move follows the adoption of the International Definition of Antisemitism by the government following a sustained campaign by Campaign Against Antisemitism, Sir Eric Pickles and others*”.⁴⁸ In February 2018, the Israel Society at Kings College London threatened the Student Union with legal action after the union promoted IAW on campus. Based on the IHRA WDA, it claimed that this was “*unlawful and antisemitic*.” The Israel Society was supported by CAMERA UK, a pro-Israel organisation describing itself

as a “media watchdog” and which has “a history of funding legal actions on campuses”.⁴⁹

“ *The IHRA definition was repetitively used as a mechanism to suppress any sort of activism that explicitly called for Boycott, Divestment, and Sanctions on Israel and solidarity with Palestine. I found that the IHRA definition was deployed as a distraction tactic, where routinely I felt burnt out defending the right to freedom of expression and solidarity with Palestine [...] I had crippling anxiety of who I could even trust, as it felt like the IHRA definition was a mode of surveillance in my day-to-day life.* ”

A student activist in a UK university

h. Talk by diplomat vetted by Leeds University / On 2 March 2017, Craig Murray, a former British diplomat and a human rights activist, was due to give a talk entitled “*Palestine/Israel: A Unitary Secular State or a Bantustan Solution*” at Leeds University. The day before the event, representatives of Leeds University Union informed him that he would be required to submit his talk for vetting. Leeds University’s Freedom of Expression Protocol states that “*it would not however allow criticism of Israel to be expressed in a form which was or might reasonably be taken to be antisemitic*”. A footnote in the Protocol cites the IHRA WDA as a tool for evaluating potential antisemitic conduct.⁵⁰ The event went ahead with staff assigned to attend the talk by University administration to “monitor” the event.

“ *It is truly appalling that such a gross restriction on freedom of speech should be imposed anywhere, let alone in a university where intellectual debate is meant to be an essential part of the learning experience.* ”

Craig Murray, diplomat

i. Lecture by Holocaust survivor censored by Manchester University /

As part of Israeli Apartheid Week in March 2017, Marika Sherwood, a Jewish historian and Holocaust survivor, was due to give a talk at Manchester University entitled: “*You’re doing to the Palestinians what the Nazis did to me*”. A month earlier, Israeli diplomats had met with university representatives and protested the event. Subsequently, Michael Freeman, the Israeli embassy’s counsellor for civil society affairs, wrote to the University with a claim that Sherwood’s talk would violate the IHRA WDA, urging the University to take action. The university responded by imposing new and restrictive conditions on the event: academics selected to chair the talk were replaced by University appointees; publicity was limited to staff and students; the student organisers were informed that the talk would be recorded; and the original title of the talk had to be changed.

2. Austria

a. Academic lecture cancelled by

Academy of Fine Arts Vienna / On 30 May 2022, Dr Walaa Alqaisiya, a Palestinian scholar in the field of Human Geography, was due to give a lecture entitled “*Queering Aesthetics: Unsettling the Zionist Sensual Regime*” at the

Academy of Fine Arts Vienna. After two student groups—the Austrian Union of Jewish Students and KESHET Austria — filed a complaint against Dr Alqaisiya, the Academy cancelled Alqaisiya’s lecture only a few days before it was scheduled to take place. The complaint referred to Alqaisiya’s support of the BDS movement, citing the IHRA WDA and the anti-BDS resolutions adopted by various institutions in Germany and Austria. It criticised the description in her abstract of a “Zionist structure of native elimination” as expressing Israel-related antisemitism. The Academy of Fine Arts cancelled the lecture, citing the supposed “de-differentiations and essentialist exaggerations in relation to Zionism”.

b. Activist sued by City of Vienna /

In August and September 2021, BDS Austria published social media posts with an image of a poster that read “Visit Apartheid”, which was affixed to a billboard bearing the Municipality of Vienna logo. The post had the sarcastic caption “We are pleased that the City of Vienna also takes note of apartheid and makes it public”. In November 2021, the Municipality of Vienna filed a lawsuit against the BDS Austria activist who had published the post, claiming defamation and misuse of the city logo. The lawsuit referred to the city’s anti-BDS resolution of 2018, which relied on the narrative and framing of the IHRA WDA of the BDS movement as being antisemitic. On 6 April 2022, the Court granted an interim injunction in favour of the City of Vienna, holding that the BDS movement was antisemitic, and that the activist had defamed the City

of Vienna. On 20 May 2022, in a communication addressed to the Austrian authorities, four UN Special Rapporteurs raised their concerns about the City of Vienna’s anti-BDS resolution and its lawsuit against BDS Austria. However, in a reply sent on 8 July 2022, the Austrian authorities reaffirmed their position and repeated the accusations against the group, claiming that the BDS Austria “movement’s campaigns are often referred to as antisemitic.”

c. Contract cancelled by Vienna museum /

BDS Austria invited Ronnie Kasrils, a renowned South-African Jewish politician and anti-apartheid activist, to give a lecture during the 2019 Israeli Apartheid Week at the Museum of Folk Life and Folk Art (Volkskundemuseum) in Vienna. The Museum’s director cancelled the rental contract with BDS Austria for the venue following an intervention by the President of the Austrian-Israeli Society. The latter claimed that support of the event would contradict the Museum’s obligations under the Vienna City Council’s anti-BDS resolution of 2018, which, as mentioned above, relies on the narrative and framing of the IHRA WDA. Following the Museum’s cancellation, BDS Austria booked an alternative room at the Hotel Triest in Vienna, which then cancelled the reservation of the event space, allegedly for the same reasons.

d. Film cancelled by ARTIS Cinema in Vienna /

On short notice, the ARTIS Cinema in Vienna cancelled a screening of the Argentinian-Palestinian film YALLA! YALLA!, scheduled for 3 Sep-

tember 2019. The prize-winning film documents the lives of seven Palestinians and their passion for football. The Cinema explained the cancellation with reference to having received “an increasing number of reviews and messages which pointed out the politically controversial narrative of the movement represented by BDS rather than the film itself.” The Cinema also cited the 2018 resolution of the Vienna City Council that seeks to prevent public institutions and venues from hosting events affiliated with the “antisemitic” BDS movement and based on the IHRA WDA narrative.⁵¹

e. Anti-racist association’s event refused by Vienna School for Adult Education / On 29 June 2020, Dar al Janub, an Austrian association for anti-racist and peace policy initiatives, signed a contract with the Vienna School for Adult Education (Volkshochschule [VHS]) for a room to perform a reading of works of the Jewish-Austrian writer and poet Erich Fried. The event, entitled “*Texts against war and alienation – Rolf Becker reads Erich Fried*”, was scheduled to take place on 18 September 2020. On 2 July, the VHS informed Dar al Janub that it was cancelling the agreement, stating that the City of Vienna did not support the event. The VHS revealed that the refusal to offer the room was not related to Erich Fried or his works, but rather to concerns about Dar al Janub raised by “institutions of importance” to the VHS, and related to the City’s anti-BDS resolution. The VHS explained that “such resolutions are absolutely binding for us as a Viennese educational institution”.⁵²

3. Germany

a. Mass dismissal of Deutsche Welle’s Arab employees / On 30 November 2021, Süddeutsche Zeitung published an article alleging that several Arab employees of the international German broadcaster Deutsche Welle (DW), had made antisemitic comments or taken anti-Israel positions. Shortly thereafter, DW announced the suspension of these employees from work, pending the results of an external “*independent investigation*” into the matter. The investigation was led by Ahmad Mansour, who has been criticised as biased by several expert scholars.⁵³ On 7 February 2022, DW announced the findings of the investigation and sent verbal notices of termination to five employees. While failing to clarify whether and how the employees had engaged in misconduct, the investigation report recommended the use of the IHRA WDA. It used the definition to analyse some of the journalists’ comments written in articles before they were employed by DW or on their social media, and concluded that their suspension was justified. On 11 February 2022, the five employees received written notice of the termination of their employment without notice. On 14 February, DW dismissed another two employees who were also mentioned in the investigation. A +972 Magazine report explained that the investigation, which was happening in a context of anti-Palestinian smears regularly published by German media, appeared to be politically motivated. Testimonies from journalists show that the investigation was more about Israel and BDS than actual antisemitic conduct or statements.

b. Nakba commemoration banned by Berlin police / On 13 May 2022, the Berlin police, with a stamp of approval from Berlin's Higher Administrative Court, prohibited public gatherings that were to be held in commemoration of the 74 years of the Nakba and in remembrance of Shireen Abu Akleh, a Palestinian journalist killed by the Israeli army. "Nakba" means catastrophe or disaster in Arabic, and refers to the expulsion of some 750,000 Palestinians from historic Palestine, when Israel was established in 1948. The Berlin police referred to the IHRA WDA in justifying their action, claiming that the public gatherings were likely to produce "*a highly anti-Israel and antisemitic atmosphere*". The decision stated that the majority of participants in the demonstration would be from the Arab diaspora and from Muslim groups. The police decision stated that "*experience has shown that this constituency currently has a clearly aggressive attitude and is not averse to violent action*". Clarifying that this action was intended to prevent criticism of Israel, the police statement referred to "*Israel related or anti-Zionist antisemitism*" and the IHRA WDA. On 15 May 2022, when individuals spontaneously took to the streets of the Neukölln neighbourhood to observe a moment of silence in honour of the slain journalist Abu Akleh, they were met with brutal police repression and arrests. The leading international human rights organisation Human Rights Watch (HRW) denounced these actions as "*undue interference with rights to free expression and assembly*". HRW designated the pre-emptive ban as "*an extreme*

restriction that effectively works as a collective punishment on those who wish to peacefully assemble, based on speculation over potential unlawful acts of a minority".

c. Scholar's invitation revoked by Die Linke on the basis of a secret dossier

/ On 2 November 2019, Dr Anna-Esther Younes, a German Palestinian scholar of critical race studies, was due to speak at a panel discussion entitled "*Racism, Anti-Muslim Racism and Strategies against the Right-wing*", which was organised by Die Linke Berlin, the democratic socialist political party. The day before event, Bianca Klose, a member of the Board of Directors at MBR-Mobile Beratungsstelle Rechts (an organisation "identifying and dealing with extreme right-wing, right-wing populism, racist and anti-Semitic behavior") called Katina Schubert, chairwoman of Die Linke's Berlin branch, to warn her of Dr Younes' alleged antisemitism. Klose sent Schubert a dossier created by MBR and Research and Information Centre for Antisemitism Berlin (RIAS Berlin) without Dr Younes' knowledge and consent. RIAS Berlin is a Berlin-based network reporting antisemitic incidents, which uses the IHRA WDA as its reference.⁵⁴ The dossier implied that Dr Younes was an antisemite, terrorist sympathiser and sexist based on, inter alia: her alleged support of the BDS movement, the abstract of an article she wrote about the women's movement in HAMAS, and several scholarly petitions she signed. The same day, Dr Younes was called, and the invitation to the panel discussion withdrawn. During the

panel discussion the next day, Schubert explained that disinviting Dr Younes was prompted by her alleged ties with the BDS movement and Die Linke’s clear stance not to cooperate with BDS. Comparisons to Nazism and the fascist boycott of Jews were drawn. This public controversy damaged Dr Younes’ public and academic reputation. Despite the falseness of the allegations and her successes in court, Dr Younes states that her reputation in German academia is essentially over due to this and other attacks against her.

“ ***Me and others have been disinvited and smeared in public already way before IHRA became this professed and international tool. However, with the European-wide and Western-wide uncritical adoption at the political and academic level, it has become literally impossible to voice any critical opinion about Israeli policies in public or in academia without the risk of losing your job, contract, funding or future employment opportunities.*** ”

Dr Younes, Independent Researcher and (Policy) Writer

d. Bank account of Jewish

organisation closed / The Jüdische Stimme für gerechten Frieden in Nahost (Jewish Voice for Just Peace in Near East, hereafter “JS”) is a Germany-based society affiliated with the federation of European Jews for a Just Peace (EJJP). A three-year-long smear campaign had been waged by the Simon Wiesenthal Center and

other groups against JS and the German Bank für Sozialwirtschaft (BFS) that hosted the JS bank account. They were accused of “*Israel-related anti-semitism*” with references to the IHRA WDA. As part of this campaign, The Simon Wiesenthal Center ranked the BFS seventh in its list of the “*Top Ten Worst Global Anti-Semitic incidents of 2018*” for providing an account to JS. Germany’s Federal Anti-Semitism Commissioner echoed these allegations stating that “*whoever actively supports antisemitic organisations such as BDS contributes to the further strengthening of antisemitism and Israel-hatred*”. The BFS claimed that the BDS movement aimed at destabilising the State of Israel—reflecting the IHRA WDA’s framing of the movement—and demanded that JS formally distance itself from the BDS movement in a public statement. Since JS refused to provide such a statement, the BFS sought to obtain an expert opinion from Dr. Juliane Wetzel at the Center for Anti-Semitism Research (Zentrum für Antisemitismusforschung-ZfA) at the Technical University of Berlin on whether or not JS should be considered antisemitic. The BFS announced in a statement that the IHRA WDA would be a criterion of the examination. In an open letter, JS refused to be subjected to such an unjustified investigation, after which the expert who had been commissioned by the BFS refused to investigate the Jewish group for antisemitism. Nevertheless, the BFS decided to close JS’s bank account permanently as of 31 December 2019.

e. Campaign to disinvite scholar

by German officials / Prof. Achille Mbembe, a renowned scholar of post-colonialism, was invited to deliver the opening speech at the 2020 Ruhrtriennale, a state-sponsored art and music festival held annually in North-Rhine Westphalia (NRW). A member of the NRW Parliament falsely accused Prof. Mbembe of antisemitism, claims that were amplified by the Federal Antisemitism Commissioner, Felix Klein. The false allegations cited the IHRA WDA and the anti-BDS resolutions of the NRW parliament and the Bundestag. They resulted in a public media controversy about whether Prof. Mbembe should be disinvited because of “*antisemitic statements in his writings*” and his support of the BDS movement.⁵⁵ The issue was not resolved, because the festival was eventually cancelled due to the Coronavirus pandemic. The incident triggered numerous statements of opposition and protest against political censorship of artists and scholars, including a call by Jewish and Israeli scholars for Felix Klein’s replacement and a plea for “*world-openness*” from influential German cultural institutions.⁵⁶

f. Jewish Israeli artistic research and educational program defunded /

An artistic research project called the School for Unlearning Zionism was initiated by an art student at the publicly funded Weißensee Art Academy (KHB) in Berlin in 2019. Participating in the project were Jewish Israelis who support equality in Palestine-Israel. The 2020 October Program included public online lectures, movie screenings and

an exhibition on Zionism, colonialism, and the history of Israel and Palestine. A smear campaign against the project was conducted by media⁵⁷ and on social media, and included disparaging comments from journalists, pro-Israel groups and commentators and politicians criticizing the public funding of the event.⁵⁸ The American Jewish Committee Berlin stated on Twitter that “*No taxpayer money should be used to delegitimize Israel*”. Resulting from this smear campaign, the School for Unlearning Zionism is now listed on the website of the Amadeu Antonio Foundation, which documents alleged antisemitic attacks in Germany. The Israeli embassy in Germany claimed on Twitter that the program is incompatible with the IHRA WDA, labelling it as “*anti-Zionist and anti-Semitic*” according to that definition. A similar comment from the Embassy was quoted in the Jüdische Allgemeine, a newspaper published by the Central Council of Jews in Germany. A journalist at the Die Welt daily also alerted the administration of the KHB after the first smears on social media were published, claiming that some lecturers in the program were linked to BDS. On that basis, the journalist alleged, the project was antisemitic according to the Bundestag’s designation of BDS as such. A few days after the start of the program, the university ceased its funding for the project and deleted the program’s website, which had been hosted on the KHB website. The university spokesperson told +972 Magazine that their decision was based on the IHRA WDA, the Bundestag’s resolution against BDS and the 2019 declaration

by the German Rectors' Conference (endorsing that resolution and the IHRA WDA).

g. Space for public debate refused by Munich City Museum / In April 2018, Klaus Ried, a German citizen living in Munich, asked the City Museum of Munich to provide a room for a public debate on the topic “How far does Munich restrict the right to freedom of expression? – The City Council’s [anti-BDS] resolution of 13 December 2017 and its consequences”. The City Museum rejected Ried’s request, pointing out that, as a municipal entity, it was bound by the resolution in question, which labels the BDS campaign as antisemitic pursuant to the IHRA WDA. The Museum argued that Munich’s anti-BDS resolution would also deny organisations and individuals from using municipal facilities to discuss this resolution. In May 2018, Ried challenged the Museum’s decision before the Administrative Court of Munich. The Court ruled that neither the anti-BDS resolution nor the Museum’s refusal of Ried’s application was unlawful, and held that the City’s decision was justified. It took another three years for this court decision to be overturned by Germany’s highest administrative court. The entire proceedings took place in three courts and resulted in costs for the plaintiff and his supporters of nearly € 40.000.

h. Space for public events refused by City of Oldenburg / In February 2019, Christoph Glanz, acting on behalf of BDS Oldenburg, requested use of a space in a city-owned facility to hold events as part of Israeli Apartheid

Week. The City Council of Oldenburg refused to grant the request. Yet, the City had already been condemned in 2018 by the Administrative Court of Oldenburg for withdrawing the permission it had previously granted for an event organised by the activists of the local BDS group in 2016. In this new refusal, the City Council referred to the IHRA WDA and claimed that the BDS campaign pursues antisemitic objectives and constitutes a threat to the liberal democratic order. When the Administrative Court of Oldenburg rejected a petition challenging the City Council’s decision, Glanz appealed before the Higher Administrative Court of Lower Saxony.

i. Anti-racism festival defamed and defunded / Palästina Spricht (Palestine Speaks), a civil society organisation raising the German public’s awareness about the rights and experience of the Palestinian people living in Germany, was disinvited from the 2021 “Dear White People” festival in Freiburg. It is an annual event organised by local anti-racist organisations to debate and promote public awareness about issues of social and environmental justice in Germany and the Global South. Organisers had invited Palästina Spricht to discuss anti-Palestinian racism. When the invitation was publicised, the festival organisers were accused of providing a platform to an “antisemitic” association, with reference to the IHRA WDA.⁵⁹ Faced with these accusations as well as threats to withdraw funding for the festival by the Federal Center for Political Education and the Freiburg Office for Migration and Integration, the organisers

disinvited Palästina Spricht. They then rescinded this decision and apologised after determining that the antisemitism accusations were unfounded.⁶⁰ The Federal Center for Political Education, however, carried out its threat and withdrew its funding.⁶¹

j. Space for public event refused by

City of Frankfurt / The initiative “*Bundestag 3 for Palestine*” (BT3P) asked the City of Frankfurt to use a conference hall for a public presentation on 5 December 2020. The topic was its lawsuit against the Bundestag’s anti-BDS resolution, which quotes and applies the IHRA WDA. The City of Frankfurt denied BT3P the use of its hall, justifying the decision with reference to the City’s 2017 resolution “*No space for antisemitism – actively opposing BDS.*” BT3P filed an application for an injunction order before the Administrative Court of Frankfurt, which was initially dismissed.

k. Use of hall cancelled by Caritas

Munich / In August 2019, the Jewish-Palestinian Dialogue Group (JPDG) asked the Caritas Association of the Archdiocese Munich and Freising to rent a conference room for a public event with a German journalist working with the magazine *Der Spiegel*. The topic of the event, which the journalist had covered in *Der Spiegel*, was “*The role of Israeli lobby organisations in German politics*”. The request for the room was sent from the e-mail address of “Yalla Arabi”, a Munich-based group that promotes Arabic culture and language. Although Caritas initially signed the rental contract for the conference

room, it then terminated the lease agreement after Charlotte Knobloch, the president of the Jewish Community of Munich and Upper Bavaria (Israelitische Kultusgemeinde München und Oberbayern),⁶² filed a complaint in a letter addressed to Caritas’ Director, asking him to “*urgently reconsider*” the renting of the room for JPDG’s event.⁶³ Caritas argued that Yalla Arabi and the JPDG are part of the BDS movement and should not be offered support according to the Bundestag’s anti-BDS resolution.

l. Rights and cultural associations excluded from festival by the City

of Bonn / The City of Bonn informed three associations that they were banned from participating in the 2019 festival “Vielfalt”, an intercultural event organised annually to celebrate cultural and linguistic diversity. The associations, which had participated in the festival in previous years, were all Palestinian: the Palestinian Community Bonn, the German-Palestinian Women’s Association and the German-Palestinian Society. The City based its decision on its Resolution “*No Place for the antisemitic BDS movement in Bonn*” of 14 May 2019 and the similar 2018 anti-BDS resolution of the parliament of North-Rhine Westphalia. The three Palestinian associations filed an interim injunction against the City’s ban on the grounds that their exclusion constituted an arbitrary interference with their rights to equality and freedom of opinion and expression

V. Conclusions & Recommendations



European proponents of the IHRA WDA, including the European Commission, claim persistently that the IHRA WDA does not interfere with existing national legislation on hate crimes or discrimination, and that it does not restrict the right to freedom of expression or assembly, arguing it is not legally binding. However, evidence in this report shows that the Commission, European governments and public and private institutions have endorsed and are promoting and implementing the IHRA WDA as if it was legally binding. Implementation of the IHRA WDA has resulted in restrictive and punitive policies and practices that violate fundamental rights. The IHRA WDA's implementation has had a "chilling effect" ⁶⁴ on the right to freedom of expression about issues related to Israel and Palestine. Groups and individuals that take a public stand against Israel's human rights violations and oppression of the Palestinian people are deliberately targeted by organisations and individuals invoking the IHRA WDA.

Section III of this paper showed that the UK Government's pressure on local governments' pension funds and universities, as well as anti-BDS resolutions and other IHRA WDA-based policies in Austria and Germany, have politically established and validated the IHRA WDA in a manner directly influencing the perceptions and actions of public and private institutions. Governments, alongside public and private actors, refer to the IHRA WDA and/or anti-BDS resolutions when interpreting anti-discrimination and hate speech codes and evaluating alleged antisemitic

conduct by those expressing support of Palestinian rights and/or criticising the Israeli government. Although the IHRA WDA has not been incorporated into existing legislation on hate crimes or discrimination in the UK and Europe (except Romania) and does not directly interfere with domestic law, the IHRA WDA and associated anti-BDS resolutions have acquired the de facto force of law.

The incidents described in Section IV demonstrate that public and private bodies have adopted restrictive and punitive measures against Palestinian rights advocates, justifying their actions with reference to the IHRA WDA. **Disciplinary proceedings against university students and staff, denial of use of public spaces, refusal of public funding, dismissal from employment and exclusion from public events and debates have targeted advocates of Palestinian rights, including many Jewish activists, with false allegations of antisemitism.** These actions are often initiated by organisations and individuals acting in support of Israel.

Individuals and groups that have been targeted by smear campaigns, delegitimization campaigns, and other forms of repression invoking the IHRA WDA, have been singled out for their statements about Israel, including references to crimes committed by the Israeli government, denunciations of "apartheid", comments about "ethnic cleansing" of Palestinians, and criticisms of Zionism. However, many scholars and human rights lawyers have long viewed Israel's treatment of Palestinians as amounting to the

crime of apartheid.⁶⁵ While the language of ethnic cleansing has no precise definition in international law, it is often used by UN bodies, legal experts, and scholars to describe Israeli practices of forced displacement of Palestinians in the Occupied Palestinian Territory and within Israel.

Reference to Israel as an apartheid state engaging in ethnic cleaning of Palestinians is not antisemitic. As political speech, opinion, or analysis, it is protected speech. Criticising Zionism as a political ideology—for instance by referring to it as practicing “settler-colonialism”, or similar concepts discussed by scholars and other experts—is also protected speech.

In the overwhelming majority of cases, complaints against staff and students facing disciplinary investigations for alleged antisemitic statements regarding the State of Israel, were dismissed and their right to freedom of expression was recognised and confirmed. The independent public body in the UK, which had rescinded its job offer to a student (case 1.b.), apologised, reinstated its employment offer and paid the student’s salary retroactively following a threat of legal action.⁶⁶

Among the incidents that took place in Germany, nine targeted individuals and associations sought remedy in the courts. In five of these cases, German courts ruled that the restrictive measures carried out by municipal authorities constituted violations of the fundamental rights to freedom of expression, assembly and equality before the law.⁶⁷ In the DW case, three dismissed journalists who

went to court, won in the first instance: the judges considered the termination of their contract unlawful. One case is still pending. Dr Younes’ case is still pending as well, but two decisions so far have been in her favour.

“ In confusing and conflating legitimate political speech about Israel with antisemitism, the IHRA WDA facilitates violations of fundamental rights. ”

However, the only opportunity to vindicate one’s rights should not be through undergoing lengthy disciplinary proceedings, by hiring legal support or by challenging decisions before courts of law. Litigation restricts the right to equal access to justice, as it requires significant time and resources. Courts’ time and resources should not be burdened with cases in which they must repeatedly uphold individuals’ rights after violations of the rights to freedom of expression and assembly have occurred. Adequate protection requires the proactive prevention of violations. According to the rights of freedom of expression and of assembly as enshrined in the European Convention of Human Rights (ECHR), states have a positive obligation to remove all obstacles to the free exercise of one’s fundamental rights. In confusing and conflating political speech about Israel with antisemitism, the IHRA WDA actively facilitates violations of fundamental rights. It promotes interference with individuals’ rights to freedom of expression and association and undermines full protection from discrimination.

Confirming these concerns, Ms. E. Ten-dayi Achiume, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, stated in her report in October 2022:

“ Although the International Holocaust Remembrance Alliance working definition is promoted as being “non-legally binding”, its de facto influence on the policy and practice of government and private actors has contributed to violations of the human rights and freedom of expression, assembly and political participation [...] it is precisely the “soft law” status of the working definition that effectively helps to undermine certain co-existent rights, without offering any remedy or means to legally challenge such violations.⁶⁸ ”

The report also pointed specifically to the problematic examples of the IHRA WDA, which “are being invoked and leveraged to suppress fundamental human rights to freedom of expression, assembly, and political participation, as well as human rights to equality and non-discrimination.”

In her report, Ms. Achiume called on all UN Member States and UN officials to reject “the political instrumentalization of the fight against antisemitism” and on all States to “suspend the adoption and promotion of the working definition and the examples attached to it.”⁶⁹

International law obliges the EU and its Member States, as well as the UK, to avoid complicity in the construction and

maintenance of an apartheid regime. Multiple international, Israeli, and Palestinian human rights NGOs have confirmed that Israel’s policies and practices towards Palestinians amounts to the crime against humanity of apartheid.⁷⁰ The persecution and silencing of civil society is a documented feature of Israel’s apartheid practices against Palestinians. As part of the Israeli government’s efforts to silence Palestinians, erase their narratives from European discourse and silence their demands for accountability, it has internationally promoted the equation and conflation of Palestine advocacy with antisemitism in government policies and public discourse.

The IHRA WDA is a tool by which the conflation of criticism of the Israeli government with antisemitism has been institutionalised and promoted by multiple media platforms and public and private organisations politically aligned with the Israeli government. By labelling criticism of Israel as antisemitic, the adoption and implementation of the IHRA WDA has created new standards of accepted speech that effectively silence advocacy and activism for Palestinian rights. Governments and European institutions should not be complicit in this political instrumentalisation of the IHRA WDA.

The IHRA WDA has had an even wider “chilling effect” on the right to freedom of expression. It has created a culture of fear and self-censorship that undermines and pre-empts a free and democratic public debate about Israel and the Palestinians. Numerous scholars have warned of this chilling effect. They point to the fact that

the IHRA WDA fails to clearly distinguish between antisemitism and criticism of the State of Israel, which facilitates the false and political motivated equation of legitimate criticism of Israel and advocacy for Palestinian rights with antisemitism.⁷¹ In 2023, anyone who speaks or writes critically about Israel, risks facing public stigmatisation and punitive measures based on false allegations of antisemitism. This is a compelling deterrent to the full exercise of the right to freedom of expression and it fosters anti-Palestinian racism, as illustrated in the above case studies. Anti-Palestinian racism has been described in a landmark report by the Arab Canadian Lawyers Association (ACLA) as follows:

“ *Anti-Palestinian racism is a form of anti-Arab racism that silences, excludes, erases, stereotypes, defames or dehumanizes Palestinians or their narratives. Anti-Palestinian racism takes various forms including: denying the Nakba and justifying violence against Palestinians; failing to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine; erasing the human rights and equal dignity and worth of Palestinians; excluding or pressuring others to exclude Palestinian perspectives, Palestinians and their allies; defaming Palestinians and their allies with slander such as being inherently antisemitic, a terrorist threat/sympathizer or opposed to democratic values.*⁷² ”

”

The ELSC urges the European Commission, as well as the governments, parliaments and public institutions of EU Member States, and the UK to:

- Cease and revoke the adoption, endorsement, promotion and implementation of the IHRA WDA.
- Respect and uphold the right to freedom of expression of individuals and associations supporting the Palestinian people, as States and public authorities are required to do under Article 10 of the European Convention on Human Rights.
- Respect and uphold the right to freedom from discrimination on the grounds of political or other opinions, as States and public authorities are required to do under Article 14 of the European Convention on Human Rights, as well as from EU institutions under Article 21 of the EU Charter of Fundamental Rights.
- Develop, promote and implement strategies and mechanisms to fight antisemitism that do not undermine the fundamental freedoms and rights of advocates for Palestinian rights. In this context, consult scholars of antisemitism and related fields, experts on anti-racism and human rights defenders excluded and side-lined so far by the European Commission.



VI. Notes



- 1 The Jerusalem Post reported on February 5, 2023: *“The Diaspora Affairs and Combating Antisemitism Ministry is expected to receive an additional NIS 120 million in its budget for the activities of combating antisemitism and combating the BDS movement. In addition, a sum of about NIS 100 million (in four years) is expected to be dedicated to a semi-government-owned company that used to be called Concert and now is called Voices of Israel. The purpose of this company, which is a joint venture with Jewish and Israeli philanthropists, is to combat BDS and promote pro-Israel narratives worldwide.”*
- 2 See for instance efforts to criminalise BDS activism in Germany: European Legal Support Center (ELSC), “German Case Law: A Coherent Set of Principles for Challenging Anti-BDS Resolutions”, 9 February 2022; in France: OpinioJuris, Baldassi and Others v. France: Criminal Convictions of BDS Activists Violate Freedom of Expression under the European Convention on Human Rights, 16 June 2020; in the United States: Palestine Legal, Legislation targeting advocacy for Palestinian rights, last accessed 14 April 2023.
- 3 Israel National News reported on June 19, 2019 about the participation of former Minister of Strategic Affairs Gilad Erdan in a conference hosted by the Global Coalition for Israel and the Legal Network including over 300 pro-Israel leaders. Erdan called it the *“most important gathering of the pro-Israel and anti-BDS community”* and praised the role played by the IHRA definition of anti-Semitism in his anti-BDS effort as well as legal action against BDS activists: *“more and more countries and institutions are adopting the IHRA in State department definitions of antisemitism which incorporate both classic and new antisemitism. The ground breaking of the Bundestag recognising the antisemitic nature of BDS was the most important step yet. [...] There have been more than 50 lawsuits against BDS over the last several years, many of which have been successful. The power of legislation and legal action was seen in the successful efforts led by people sitting here.”* Erdan highlighted the role of this network to secure these “victories”: *“they happen because of the synergy between us and the cross-country cooperation”*. He also mentioned the public funding of *“pro-Israel activities.”*
- 4 Lerman A. (2022). *Whatever Happened to Antisemitism? Redefinition and the Myth of the ‘Collective Jew’*. Pluto Press.
- 5 Lerman A. (2022). *Whatever Happened to Antisemitism? Redefinition and the Myth of the ‘Collective Jew’*. Pluto Press, at/p. 151-155.
- 6 *Ibid.*, at/p. 102 and 126.
- 7 *Ibid.*, at/p. 128.
- 8 Stern-Weiner, J. (2021). The Politics of a Definition. Free Speech on Israel, at/p. 26-30-40-44.
- 9 The International Holocaust Remembrance Alliance (IHRA) was initiated in 1998 by former Swedish Prime Minister Göran Persson *“to strengthen, advance and promote Holocaust education, research and remembrance”* and counts 35 member countries, according to the IHRA’s website.
- 10 See UCL Academic Board Working Group on Racism and Prejudice, “Report of the Academic Board Working Group on Racism and Prejudice”, 20 December 2020 and Foundation for Middle East Peace, Challenging the IHRA Definition of Antisemitism – Expert Views & Resources, 24 April 2023.
- 11 For further details see: 11.11.11, European Commission “Handbook” entrenches controversial IHRA definition of antisemitism, 2 March 2021, concerns n. 1-2, p. 1-2; ECCP and Free Speech on Israel, Six Reasons why no one should adopt the so-called “EUMC” or IHRA Working Definition of Antisemitism, December 2017.
- 12 Borrell stated: *“The Commission uses the non-legally binding working definition of antisemitism of the International Holocaust Remembrance Alliance (IHRA definition) as a practical guidance tool and a basis for its work to combat antisemitism. Claiming that the existence of a State of Israel is a racist endeavour is amongst the illustrative examples included under the IHRA definition.”* Answer given by High Representative/Vice-President Borrell i Fontelles on behalf of the European Commission, 20 January 2023.

- 13 See Feldman, D. Will Britain's New Definition of Antisemitism help Jewish People? I'm sceptical, 28 December 2016; US House of Representatives, Written Testimony of Kenneth S. Stern, 7 November 2017.
- 14 Despite knowledge of how the IHRA WDA had been applied in ways leading to violations of the right to freedom of expression, the EU's Fundamental Rights Agency (FRA) stated in 2018 that it could not advise EU institutions against promoting the IHRA WDA. The FRA's justification was that *"the Agency is not mandated to develop or endorse legal definitions"*, and because *"the freedoms of expression, association and assembly are not included among the thematic areas of FRA's work established by the Council of the EU in the Agency's Multi-annual Framework (2018 – 2022)"*, private letter of Michael O'Flaherty, Director, EU Fundamental Rights Agency to the European Coordination of Committees and Associations for Palestine (ECCP), 8 August 2018.
- 15 See Peter Ullrich, "Expert opinion on the 'Working Definition of Antisemitism' of the International Holocaust Remembrance Alliance," Rosa Luxemburg Stiftung, October 2019.
- 16 See, for instance, her Speech at Beit HaNassi on 4 November 2019, or her Leadership Talk in Vienna published by by De Gruyter in 2020.
- 17 See, for example, letters sent by European Jews for a Just Peace (EJJP) to MEPs: EJJP warns Parliament's Justice Committee members of underhand attempt to pass pro-IHRA resolution outside normal procedure, 18 March 2017; EJJP lobbies Socialist and Democratic Group MEPs to amend the pro-IHRA resolution, 1 June 2017.
- 18 For expert critique of the IHRA WDA, see: Foundation for Middle East Peace, Challenging the IHRA Definition of Antisemitism – Expert Views & Resources, 24 April 2023 and joint website by Palestine Solidarity Campaign, British Committee for Universities of Palestine and Jews for Justice for Palestinians, <https://noihradefinition.co.uk/>.
- 19 Twitter thread published by Law for Palestine, 22 December 2022.
- 20 Letter published in EUObserver on November 3, 2023.
- 21 McGreal, C. UN urged to reject antisemitism definition over 'misuse' to shield Israel, 24 April 2023.
- 22 See: Civil society letter to European Commission: counter political instrumentalization of antisemitism, 16 June 2021; ELSC, "The European Commission "Handbook" Promoting the Controversial IHRA Working Definition of Antisemitism: A Legal Analysis", April 2022; and 11.11.11, European Commission "Handbook" entrenches controversial IHRA definition of antisemitism, 2 March 2021.
- 23 Letter received by the ELSC on 23 August 2021 from the European Commission Acting Director of DG Justice Salla Saastamoinen, on behalf of the Vice-President of the European Commission Margaritis Schinas and Justice Commissioner Didier Reynders.
- 24 Despite the UK no longer being a Member State of the EU, many relevant cases outlined in this report occurred when the UK was still a Member State. The UK remains part of Europe and possibly influences how the IHRA WDA is being incorporated and implemented in EU Member States.
- 25 See, for instance: the conclusions of the IHRA Chair at the Plenary in May 2016, repeated in a statement in December 2016 when the UK adopted the IHRA WDA; EJC President's statement, 25 January 2017; Statement from the World Jewish Congress (WJC), 21 February 2019; Joint submission from EJC, WJC, B'nai B'rith International, AJC, EUJS, EURJ, B'nai B'rith Europe to the European Commission, 2 June 2021.
- 26 Stern-Weiner, J. (2021). The Politics of a Definition. Free Speech on Israel, at/p. 28 fn 80.
- 27 European Commission, Handbook for the practical use of the IHRA working definition of antisemitism, January 2021, at/p. 6.

- 28 Ibid, at/p. 18.
- 29 House of Commons, Home Affairs Committee, Antisemitism in the UK, 13 October 2016, p. 12, para 24.
- 30 Hill, J. Jenrick in Political Spat over Antisemitism Definition, 28 January 2020.
- 31 Ibid.
- 32 The Local Government Chronicle reported on 28 January, 2020 that Jenrick wrote: *“I will shortly publish the list of those councils that have told my department that they will adopt the definition and those who have explicitly refused to do so”*.
- 33 The Supreme Court eventually struck down the ministerial guidance after civil society organisations challenged it in courts. See Smulian, M. Supreme Court rules against government on LGPS and ethical disinvestment, 29 April 2020. See also: Palestine Solidarity Campaign, Palestine Solidarity Campaign defeats UK Government over pensions divestment, 28 April 2020.
- 34 On the announced legislation, see: Ullah, A., Queen’s Speech: UK to ban boycott campaigns in blow to BDS supporters, 10 May 2022. See also: Siddique H. and Walker P., UK anti-boycott bill is attack on freedom of expression, say civil society groups, 12 May 2023 ; and the joint campaign’s website Right to Boycott.
- 35 A series of bills in the UK such as the Public Order Bill and before that the Policing Act were introduced to Parliament in an attempt to heavily restrict protest rights in the UK, see more: Liberty, Protest Rights; also see UK crackdown on Refugees rights and other civic freedoms on CIVICUS, United Kingdom Latest Updates.
- 36 Conservative Friends of Israel, Minister Calls on UK Universities to Tackle Antisemitism, Particularly in Context of ‘Israel Apartheid Week’.
- 37 These statements directly echo the European Commission’s Handbook, which affirms that *“calls for boycotts based on ethnic, religious, and/or national background”* are instances of *“antisemitic crimes”*, thus implicating the BDS movement. Moreover, example 7 of the IHRA WDA defines as potentially antisemitic the claim that the State of Israel is a racist endeavour. This position is often expressed by the BDS movement as part of its anti-racist approach.
- 38 See City of Vienna, Municipal Council, Minutes of the 39th Session, 27 June 2018.
- 39 Austrian Federal Chancellery, National Strategy against Antisemitism, 2021. See, for example, pp. 51 – 54; p. 57 and fn 30 of the Strategy; at/p. 122, 152 and 154.
- 40 For instance, the resolution adopted by the City of Cologne affirmed that boycott campaigns are manifestations of antisemitism when they question Israel’s right to exist; the resolutions adopted by the Cities of Bonn and Bielefeld further determined that the BDS movement is reprehensible because it supposedly calls into question Israel’s right to exist. These determinations are directly linked to the IHRA WDA, as previously established (see fn 37).
- 41 State Parliament of Nordrhein-Westfalen, In Nordrhein-Westfalen ist kein Platz für die antisemitische BDS-Bewegung, motion of 11 September 2018 as adopted on 20 September 2018. See also CDU Parliamentary Group North Rhine-Westphalia, Günther Bergmann (CDU) und Lorenz Deutsch (FDP) zur BDS-Bewegung, 20 September 2018.
- 42 Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität (“Law on Combating Right-Wing Extremism and Hate Crime”), in effect since 1 July 2021. See also Strafgesetzbuch, § 46.

- 43 Federal Parliament (Deutscher Bundestag), Bill of the parliamentary groups of the CDU/CSU and SPD, Entwurf eines Gesetzes zur Bekämpfung des Rechtsextremismus und der Hasskriminalität (“Draft law on combating right-wing extremism and hate crime”), 10 March 2020, p. 33. See also Federal Parliament (Deutscher Bundestag), Gesetz gegen Rechtsextremismus und Hasskriminalität beschlossen, 18 June 2020.
- 44 Personal data of the involved individuals, groups and organisations are not always disclosed to maintain their privacy.
- 45 Private case file with the ELSC.
- 46 Doherty, R. University cancels Israel Apartheid Week event, 21 February 2017. See for example BDS, Israeli Apartheid Week – an even bigger success in 2019, 10 May 2019.
- 47 Harpin, L. UCL is second university to cancel Apartheid Week event, 23 February 2017. UCL formally adopted the IHRA definition in November 2019. See UCL statement on IHRA, 12 February 2021.
- 48 CAA also reported on 24 February 2017: “*Minister of State for Universities, Jo Johnson MP, wrote to Universities UK earlier this month asking that all universities be conscious of the definition as ‘Israeli Apartheid Week’ approached.*” In the same article, the CAA claims that “*the decision came as Campaign Against Antisemitism released urgent guidance to students*” calling to use the IHRA WDA to assess and reports antisemitic incidents during IAW.
- 49 Jewish News, Jewish students may sue university union for promoting ‘Israel Apartheid Week’, 28 February 2018.
- 50 The University of Leeds, Protocol: Freedom of Expression, last revised September 2018, p. 2.
- 51 BDS Austria, Protest von BDS Austria zur verhinderten Österreich-Premiere von „¡YALLAH! ¡YALLAH!“, 4 September 2019. See also Middle East Monitor, BDS Austria slams cancellation of Palestinian film screening after Israel pressure, 6 September 2019.
- 52 Based on private email correspondence between Dar al Janub and the VHS dated 23 June, 29 June, 2 July and 10 July 2020. Copies in ELSC case file.
- 53 Ahmad Mansour has been associated with multiple conservative organisations that promote Islamophobic views and policies. He was formerly program director and senior policy advisor at the Brussels-based think-tank European Foundation for Democracy. A research project at Georgetown University describes it as a think-tank that “*focuses on defaming Muslim civil society organisations and attempting to exclude them from the European political field*”.
- 54 RIAS Berlin’s umbrella organisation – RIAS Federal Association – was commissioned by the European Commission to write the EC Handbook (cf. Introduction). RIAS is a prominent promoter of the IHRA WDA at EU level.
- 55 Eimermacher, M. Eine echte Causa, 22 April 2020. It was claimed that Prof. Mbembe had challenged the State of Israel’s “*right to exist*”, compared apartheid in South Africa with the Holocaust, and that he had supported statements and a book published by the BDS movement. See also: Carp, S. Weshalb ich Achille Mbembe für einen Vortrag bei der Ruhrtriennale eingeladen habe, 7 May 2020.
- 56 See: Humboldtforum, Statement by the “Initiative GG 5.3 Weltoffenheit” (in German and English). See also: 377 Scholars and Artists Pledge to Oppose Political Litmus Tests in Germany, 11 May 2020.
- 57 Also see reports from Israel Hayom on 7 October 2020, or Jüdische Allgemeine on 9 October 2020.
- 58 Among them, Volker Beck denounced the project on Twitter. Beck was a member of the Bundestag, the German federal parliament from 1994 to 2017, and was spokesperson for the Green Parliamentary Group for interior affairs and religion. He has become, since this incident, Chairman of the German Israeli Foundation (DIG).

- 59 Zusammen Leben, *Stellungnahme zu den Vorwürfen gegen den Kooperationspartner Palästina Spricht-Freiburg*, 5 July 2021.
- 60 Supra.
- 61 Supra. See also: *Palästina Spricht-Freiburg statement*, 12 June 2021.
- 62 Charlotte Knobloch is an important pro-Israel voice in Bavaria. She is also Vice-President of the European Jewish Congress and the World Jewish Congress, two organisations promoting agenda in support of Israeli government's policies.
- 63 Schauer, L. *Vortrag von Antisemiten? Caritas München kündigt Verein fristlos*, 19 September 2019.
- 64 See the analysis of Laurent Pech, Full Professor of Law, Dean of Law and Head of the Sutherland School of Law at University College Dublin, who defines "chilling effect" as "the negative effect any state action has on natural and/or legal persons, and which results in pre-emptively dissuading them from exercising their rights", in Pech, L. "*The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, the Rule of Law, and Fundamental Rights in the EU*", Open Society European Policy Institute, March 2021.
- 65 See, for example, Amnesty International, "*Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity*", 1 February 2022; Human Rights Watch, "*A Threshold Crossed. Israeli Authorities and the Crimes of Apartheid and Persecution*", 27 April 2021; Dugard, J., Reynolds, J. (2013). *Apartheid, International Law, and the Occupied Palestinian Territory*, European Journal of International Law (EJIL).
- 66 Private case file with the ELSC.
- 67 See Bavarian Administrative Court, 4 B 19.1358, 17 November 2020; Federal Administrative Court, Press Release Nr. 6/2022 about Judgement 8 C 35.20, 20 January 2022; Lower Saxony Higher Administrative Court, ME 10 48/19, 27 March 2019; Munich District Court, 12 O 12183, 23 September 2019; Cologne Administrative Court, 14 L 1765/19, 12 September 2019; Hessian Administrative Court, 8 B 3012/20, 4 December 2020. See also: ELSC, *ECtHR Rules Right to Boycott is Protected by Right to Freedom of Expression*, 20 June 2020.
- 68 Achiume, E.T. *Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 7 October 2022. UN GA A/77/512, at/p. 15.
- 69 Ibid, at/p. 16.
- 70 See Al-Haq, "*Israeli Apartheid: Tool of Zionist Settler Colonialism*", 29 November 2022; B'tselem, "*A Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*", 12 January 2021; Amnesty International, "*Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity*", 1 February 2022; Human Rights Watch, "*A Threshold Crossed. Israeli Authorities and the Crimes of Apartheid and Persecution*", 27 April 2021.
- 71 Supra, UCL Academic Board, "Report of the Academic Board Working Group on Racism and Prejudice", 16 December 2020. See also, Maya Hertig Randall, M and Imbeck, C. "Legal Opinion on the IHRA Working Definition of Antisemitism", 6 November 2020; University and College Union Edinburgh, Letter regarding the University of Edinburgh's adoption of the IHRA definition of antisemitism, 20 January 2022. For additional sources, see fn 18.
- 72 Arab Canadian Lawyers Association (ACLA), "Anti-Palestinian Racism: Naming, Framing and Manifestations – Community Consultations and Reflections", 25 April 2022.



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